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September 29, 2005

VIA EMAIL & HAND DELIVERY

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**Re: Generic Docket – Amendments to Interconnection
Agreements/Change of Law
Docket No. 2004-316-C
Our File No. 30042-0003**

Dear Mr. Terreni:

Enclosed for filing please find the Rebuttal Testimony of Wanda G. Montano on behalf of US LEC of South Carolina, Inc. By copy of this letter we are serving the same on all parties of record. Please stamp the extra copy provided as proof of filing and return it with our courier.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy
Bonnie D. Shealy

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/bds
Enclosures

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Dan F. Arnett, Chief of Staff (via email & U.S. Mail)
All parties of record (via email & U.S. Mail)
Ms. Daphne Dukes (via email)

OK D. Duke
OK D. Duke

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

In the Matter of:

Petition to Establish Generic Docket to
Consider Amendments to Interconnection
Agreements Resulting from Changes of Law

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Docket No. 2004-316-C

REBUTTAL TESTIMONY OF

WANDA G. MONTANO

ON BEHALF OF

US LEC OF SOUTH CAROLINA INC.

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1 **Q: PLEASE STATE YOUR NAME FOR THE RECORD.**

2

3 **A:** My name is Wanda G. Montano.

4

5 **Q: ARE YOU THE SAME WANDA G. MONTANO WHO FILED DIRECT**
6 **TESTIMONY IN THIS DOCKET ON AUGUST 23, 2005 ON BEHALF OF**
7 **US LEC OF SOUTH CAROLINA INC.?**

8

9 **A:** Yes.

10

11 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

12

13 **A:** The purpose of my testimony is to respond to certain direct testimony propounded
14 by BellSouth's witnesses in this docket. Specifically, I will address matters
15 testified to by Kathy K. Blake and Pamela A. Tipton.

16

17

18 **Q: WHAT PORTIONS OF MS. BLAKE'S TESTIMONY DO YOU WANT TO**
19 **RESPOND?**

20

21 **A:** I wish to respond to Ms. Blake's testimony on the transition period process.

22

1 **Q: HOW DO YOU DIFFER WITH MS. BLAKE’S STATEMENTS ABOUT**
2 **THE TRANSITION PERIOD PROCESS?**

3
4 **A:** Ms. Blake states that “the CLECs apparently believe they are only required to
5 submit orders before March 10, 2006 ... and not complete other steps necessary to
6 effectuate a smooth transition...” (Blake Direct Testimony (Issue 32), Page 18,
7 Lines 7 - 11). As I previously testified, US LEC is certainly willing to cooperate
8 with BellSouth and provide the necessary orders/conversion worksheets by the
9 December date that BellSouth has proposed for submitting the initial conversion
10 orders so long as BellSouth agrees that the pricing for the circuits does not
11 “convert” until March 10, 2006. BellSouth has been unwilling to make that
12 agreement. US LEC is concerned that BellSouth will attempt to change the
13 pricing on the circuits as of the date the conversion spreadsheets are submitted,
14 which is unacceptable to US LEC and contrary to the FCC’s rules, as I identified
15 in my Direct Testimony and will discuss in this testimony.

16
17 **Q: WHAT PORTIONS OF MS. TIPTON’S TESTIMONY DO YOU WANT TO**
18 **RESPOND?**

19
20 **A:** I wish to respond to Ms. Tipton’s testimony on the transition period process for
21 high capacity loops and dedicated transport (Tipton Direct Testimony, (Issue 2),
22 Page 5, Line 13 though Page 6, Line 24 and Page 9, Line 20 through Page 13,
23 Line 10), and the manner in which BellSouth applied the FCC’s definition of

1 “business lines” to calculate the number of business lines in a wire center for the
2 impairment analysis (Issue 4, Page 17, Line 1 through Page 18, Line 1 and Issue
3 5(b), Page 32, Line 9 through Page 36, Line 4).

4
5 **Q: IN MS. TIPTON’S TESTIMONY ON BELL SOUTH’S TRANSITION**
6 **PROPOSAL, MS. TIPTON DESCRIBES BELL SOUTH’S PROPOSAL**
7 **THAT A CLEC SUBMIT SPREADSHEETS BY DECEMBER 9, 2005, TO**
8 **IDENTIFY THE LOOPS AND TRANSPORT THAT THE CLEC WILL BE**
9 **CONVERTING OR DISCONNECTING IN NON-IMPAIRED WIRE**
10 **CENTERS. ALTHOUGH YOU DISCUSSED YOUR CONCERNS ABOUT**
11 **THE PROPOSAL IN YOUR DIRECT TESTIMONY, CAN YOU BE MORE**
12 **SPECIFIC AS TO WHY US LEC HAS BEEN RELUCTANT TO ACCEPT**
13 **THE BELL SOUTH PROPOSAL?**

14
15 **A:** Yes, I can. In our negotiations with BellSouth, we discussed the December 9th
16 date and expressed our reluctance to agree to that date because we were given no
17 assurances as to when BellSouth would deem the conversions to have been
18 completed. Under BellSouth’s proposal, the increase of pricing for a circuit that
19 was being converted from a UNE to special access (even though no physical
20 change to the circuit would be made) would be as of the date of the conversion of
21 the circuit to the alternate arrangement or as of March 11, 2006, whichever was
22 earlier; for example the language in connection with DS1 and DS3 Loops is in
23 Section 2.1.4.11.2 of Exhibit PAT-1, Attachment 2, Page 10. BellSouth gave us

1 no assurances of when the conversions would be completed, *i.e.*, whether the
2 conversions would be completed prior to the end of the calendar year 2005 or at
3 some unstated and potentially arbitrary date sometime in 2006. Although the
4 BellSouth proposal provides that “the Parties shall negotiate a project schedule for
5 the Conversion” of the UNEs on the spreadsheet, no specifics of what was meant
6 by this very vague proposal was provided to us by BellSouth at any time (an
7 example of the language in connection with DS1 and DS3 loops is in Section
8 2.1.4.11 of Exhibit PAT-1, Attachment 2, Page 10). From our perspective, it is to
9 BellSouth’s economic benefit, and our economic disadvantage, to have the
10 conversions completed prior to March 10, 2006. At no time during our
11 discussions did BellSouth ever offer to permit US LEC to select the dates on
12 which the conversions would occur. Neither did BellSouth ever provide us any
13 incentive to provide the spreadsheet earlier rather than later. The only incentive
14 provided was essentially a club over the head, *i.e.*, if we failed to provide the
15 spreadsheet by the date they demanded it, US LEC would be assessed additional
16 charges for their “work” in identifying the circuits that would need to be
17 converted. For business reasons, we wanted to ensure that conversions to the
18 higher pricing for special access for the embedded base UNEs did not occur
19 during our 2005 fiscal year. In addition, it is clear that the FCC envisioned and
20 indeed ordered a transition period for the transition pricing through March 11,
21 2006.

1 Our initial counteroffer in June 2005 to BellSouth was that we would provide a
2 spreadsheet to them as soon as practicable upon signing of the TRRO amendment
3 to our Interconnection Agreements, so long as BellSouth would not deem the
4 conversions completed until March 10, 2006. Our offer was rejected
5 immediately, which increased our concerns that BellSouth would work the
6 spreadsheets as quickly as possible to complete the conversions in advance of the
7 expiration of the March 11, 2005 - March 10, 2006 twelve month transition
8 period. Consequently, we then offered to submit our spreadsheet identifying the
9 circuits to be converted or disconnected to BellSouth by December 31, 2005.
10 This is a mere 22 days later than the proposal by BellSouth, and gave us some
11 assurance that we would not be at risk of any price increase on the embedded base
12 during the 2005 fiscal year.

13
14 US LEC has no issue with submitting a spreadsheet or issuing orders prior to
15 March 10, 2006. Rather, our issue is that the UNE transition rate be made
16 available on our embedded base facilities from March 11, 2005 until March 10,
17 2006. The plain meaning of Sections 51.319(a)(4) (iii), (a)(5)(iii), (e)(2)(ii)(C),
18 and (e)(2)(iii)(C)¹ of the FCC's Rules is that the network element that a CLEC is
19 leasing from the ILEC at UNE rates as of March 11, 2005 remains available to the
20 CLEC at the UNE transitional rate until March 10, 2006. If the circuit is

¹ Generally each of these rules provide "[f]or a 12-month period beginning on the effective date of the Triennial Review Remand Order, any [DS1 or DS3 Loop or DS1 or DS3 Dedicated Transport] UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is no longer obligated to unbundle pursuant to [applicable FCC rule cite], **shall be available for lease** from the incumbent LEC [at the applicable UNE transition rate] and the effective date of the Triennial Review Remand Order for that [loop or transport] element. (emphasis added)

1 disconnected during the transition period, then, of course, the billing for the
2 disconnected circuit would cease. But until the transition period ends, if the
3 CLEC has any network elements serving customers as of March 11, 2005, then
4 the rate for those elements does not increase above the UNE transitional rate until
5 March 11, 2006, whether that element is considered a UNE or special access
6 facility. Thus, US LEC believes that our embedded base of circuits in wire
7 centers that are found to be non-impaired are entitled to the UNE Transitional
8 Pricing until March 10, 2006. I remain concerned as noted in other portions of
9 my testimony that wire centers have been designated as non-impaired that will
10 subsequently be found to be impaired.

11
12 I would also note that the FCC in the text of the TRRO distinguished between the
13 transition process for loops and transport and the UNE-P. In paragraphs 143
14 (transport) and 196 (loops) of the TRRO, the FCC states

15
16 [carriers] have twelve months from the effective date of this Order
17 to modify their interconnection agreements, including completing
18 any change of law processes. **At the end of the twelve-month**
19 **period**, requesting carriers must transition all of their affected
20 [UNEs] to alternative facilities or arrangements. (emphasis added)
21

22 I compare this language to the text of the order in connection with the transition
23 of UNE-P, (TRRO, paragraph 216) which states:
24

1 [c]ompetitive LECs must submit orders within twelve months to
2 convert their embedded UNE-P customer base to UNE-L or
3 another arrangement. However, within that twelve-month period,
4 incumbent LECs must continue to provide access to mass market
5 unbundled local circuit switching at a rate of TELRIC plus one
6 dollar for the competitive LEC to service those customers until the
7 incumbent LEC successfully convert those customers to the new
8 arrangement.
9

10 I have searched the TRRO and find no similar discussion that supports
11 BellSouth's position that it may change the UNE transition rate on loops and
12 transport that are subject to transition prior to the end of the transition period.
13 Consequently, if the FCC intended to modify the plain meaning of the cited
14 transition period rules for loops and transports to permit an ILEC to increase the
15 rate upon conversions, it certainly could have done so.
16

17 Most likely the reason that the FCC distinguished between the conversion of UNE
18 loops and dedicated transport from the conversion of UNE-P is that if a CLEC is
19 going to convert its UNE loops and dedicated transport to an alternative service of
20 the ILEC, the CLEC will choose to convert to special access. Such conversion to
21 special access generally does not require any physical rearrangement and the
22 facilities do not "change", whereas the UNE-P conversion may require a physical
23 rearrangement to be accomplished, if, for example, the conversion is to a UNE-L.
24 Additionally, as the conversion for a UNE loop or dedicated transport is more a
25 "billing change" rather than a physical facility change, the billing change can be

1 accomplished after March 11, 2006, with a true-up back to the date to account for
2 the difference in pricing between the UNE transition rate and the higher special
3 access rate. Such a true-up will ensure that both parties are protected in
4 accordance with the TRRO. BellSouth is made whole for the alternative
5 arrangements effective as of March 11, 2006 and the CLEC is correctly billed the
6 UNE transition rates through the end of the transition period. Neither party thus
7 is able to game the system and invoke any economic harm on the other.
8

9 **Q: DO YOU HAVE ANY UNDERSTANDING OF THE DIFFERENCE**
10 **BETWEEN THE WORK THAT BELL SOUTH MIGHT HAVE TO DO IF**
11 **IT OBTAINED A LIST OF CIRCUITS FROM THE CLEC WHICH**
12 **IDENTIFIES THE CIRCUITS THAT MUST BE CONVERTED AND IF**
13 **BELL SOUTH CREATED THE LIST IDENTIFYING THE CIRCUIT?**
14

15 **A:** Yes, I believe I do. Even if US LEC were to produce and submit a spreadsheet
16 identifying all the UNEs that must be converted and/or disconnected, BellSouth
17 will independently produce a list of circuits that it believes US LEC to have in a
18 non-impaired wire center that must be converted or disconnected. My
19 understanding is that BellSouth, using this list, would compare its list to the US
20 LEC list and would identify any discrepancies between the two lists and then the
21 parties would discuss these discrepancies and resolve which list is correct. Thus,
22 BellSouth will create a list of circuits whether US LEC provides a spreadsheet by
23 December 9, 2006 or not.

1
2 **Q: DOES US LEC OBJECT TO CREATING SUCH A LIST AND WORKING**
3 **WITH BELLSOUTH TO IDENTIFY DISCREPANCIES BETWEEN THE**
4 **TWO LISTS?**

5
6 **A:** No, US LEC does not. We would welcome the opportunity to work with
7 BellSouth to identify the circuits and issue the orders needed for the conversions,
8 provided we have contractual assurances from BellSouth that **the conversions**
9 will not occur prior to the end of the FCC's 12 month transition period. In
10 addition, we have on several occasions advised BellSouth that we would not
11 object to the physical conversion of the circuits prior to March 11, provided that
12 the billing rates did not change until March 11, 2006. BellSouth has consistently
13 rejected this proposal.

14
15 **Q: DO YOU AGREE WITH BELLSOUTH'S METHODOLOGY IN**
16 **DETERMINING THE NUMBER OF BUSINESS LINES WITHIN A WIRE**
17 **CENTER AS DESCRIBED IN MS. TIPTON'S TESTIMONY?**

18
19 **A:** No. My primary disagreement with the methodology used by BellSouth is that
20 BellSouth has significantly increased the number of business lines attributable to
21 a wire center by multiplying each high capacity circuit by its maximum
22 channelized capacity rather than (a) counting a UNE loop as one line regardless of
23 the capacity, and / or (b) only including the activated channels of a high capacity
24 facility provided by BellSouth that actually are providing voice switched access

1 service to a business customer. For example, for a T-1 UNE loop, BellSouth has
2 multiplied each circuit by 24, and for DS-3 capacity circuits, the multiplier is 672,
3 thus inflating the number of CLEC “business lines” considerably. Accordingly,
4 under BellSouth’s calculations, a number of wire centers are considered “non-
5 impaired” when they should be deemed “impaired.” These offices should be
6 removed from the BellSouth Non-impaired Wire Center Lists.

7
8 **Q: COULD YOU EXPLAIN YOUR DISAGREEMENT IN MORE DETAIL?**

9
10 **A:** Yes. BellSouth has interpreted the last sentence of the “business line” definition
11 in Section 51.5 of the FCC rules (set forth in Ms. Tipton’s testimony on Page 16,
12 Lines 13 –28) to permit it to create the “potential” number of business lines that
13 could be activated in a wire center, whether by BellSouth or a CLEC. The FCC,
14 in the text of the TRRO, does not support BellSouth’s reading as there is no
15 discussion of any “grossing up” mechanism by which the ILECs could increase
16 the ARMIS line information or the UNE loop numbers. The FCC stated that its
17 analysis was based on “ARMIS 43-08 business lines, plus business UNE-P, plus
18 UNE loops,” a formula that is clearly additive. (TRRO, Paragraph 105). There is
19 no indication that the FCC expected anything but the “actual” line counts to be
20 used. The FCC, at Paragraph 105 of the TRRO, stated “by basing our definition
21 in an ARMIS filing required of incumbent LECs, and adding UNE figures, which
22 must also be reported, we can be confident in the accuracy of the threshold, and a
23 simplified ability to obtain the necessary information.” BellSouth’s methodology

1 is not so straightforward as they would have this Commission believe, and
2 requires review of data that is not filed with the FCC and is not available to the
3 CLECs to verify. Moreover, there is no indication in the TRRO that the FCC
4 intended to inflate the number of actual business lines in a wire center and,
5 thereby, increase the number of wire centers that would be considered “non
6 impaired.”

7
8 Further, the plain meaning of the second to last sentence of the definition reflects
9 guidance by the FCC of how the ILEC is to calculate the sum of “the ILEC
10 business switched access lines” that would then be added to the “ sum of all the
11 UNE loops connected to the wire center.” The second to last sentence in the
12 subsection entitled “Business Lines” contained in Section 51.5 of the FCC’s rules
13 states that “business line tallies (1) shall include **only** (emphasis added) those
14 access lines connecting end-user customers with incumbent LEC end-offices for
15 switched services, (2) shall not include non-switched special access lines, (3) shall
16 account for ISDN and other digital access lines by counting each 64 kbps-
17 equivalent as one line.” This third phrase is similar to the instructions for ARMIS
18 43-08 and directs the ILEC to count the activated channels on ISDN or digital
19 switched access line² for reporting purpose. Consequently, there is nothing within
20 this second to last sentence, or indeed anywhere within the TRRO, that would
21 indicate that the FCC was approving the “grossing up” of either the ILEC
22 business switched access lines or high capacity UNE loops to each of their

² See ARMIS 43-08, Table III – Access Lines in Service by Customer – General Instructions, <http://www.fcc.gov/wcb/armis/instructions/2004/definitions08.htm#T3gen> (“ISDN and other digital access lines should be reported as 64 kbps equivalents”).

1 maximum capacity. Moreover, the use of the phrase “sum of all UNE loops”
2 rather than the “sum of all UNE loop capacity” also indicates that the FCC did not
3 intend to increase the number of business lines in a wire center by the maximum
4 capacity of a UNE loop.

5 .
6 Further, the first sentence of the subsection entitled “Business Lines” contained in
7 Section 51.5 of the FCC rules states that a “business line” is “an incumbent-
8 owned switched access line used to serve a business customer, whether by the
9 incumbent LEC itself or by a competitive LEC that leases the line from the
10 incumbent LEC.” I don’t think that there is a disagreement between US LEC and
11 BellSouth that a “UNE loop” is not within this definition of “business line.”
12 Otherwise, there would be no reason for the FCC’s formula to have the ILECs do
13 a mathematical calculation that (1) adds the “business lines” (as previously
14 defined) with (2) “UNE loops” to determine the number of business lines in a
15 wire center, as set forth in the second sentence of the rule. This simply represents
16 the unilateral license that BellSouth has taken with the FCC’s language, and
17 BellSouth’s methodology must be rejected.

18
19 **Q: DOES US LEC TYPICALLY UTILIZE ALL CHANNELS ON A T-1 LOOP**
20 **FOR SWITCHED VOICE SERVICES TO BUSINESS CUSTOMERS?**

21
22 **A:** No, we do not. Customers may purchase multiple T-1 facilities, which can be
23 configured as 100% data access, 100% Internet access or 100% voice. Customers

1 may also combine data services, Internet access and voice business lines on each
2 facility. Smaller customers who purchase a single T-1 for service may combine
3 all three services on the single circuit. Thus, it is erroneous for BellSouth to
4 assume that 100% of all facilities, both special access and UNE loops, are utilized
5 100% as business switched access lines.

6
7 **Q: DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

8
9 **A: Yes.**

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-316-C**

In Re:)
)
Petition to Establish Generic)
Docket to Consider Amendments to)
Interconnection Agreements)
Resulting From Changes of Law)
_____)

CERTIFICATE OF SERVICE

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This is to certify that I, Mary F. Cutler, a legal assistant with the law firm Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below the **Rebuttal Testimony of Wanda G. Montano** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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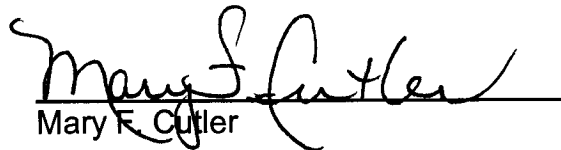
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Dated at Columbia, South Carolina this 29th day of August 2005.


Mary F. Cutler